

Report of Com on
Judiciary & Judicial
Department

Nov 13. of 8

Read and ordered

to lie on Table

Thomson

Asst Sec

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Mr President.

Your Committee on Judiciary and Judicial Department, to whom were referred Resolutions, Amendments, Proposals &c Nos 3. 9. 10 (twice). 12. 15. 21. 27. 30. 31. 42. 57. 65. 76. 85. 89. 156. 174. 180. 183. 189. 190. 194. 208. 222. 245. 246. 249. 262. 263. 272. 274. 275. 291. 310. 348. 365. 367. 386. 399. 404. 426. 442. 455. 457

beg leave to report, that they have considered the same and recommend that they be not adopted.

So much of such proposed amendments, as Your Committee have approved, are in a modified form contained in the Judiciary System which accompanies this report.

We have the honor to submit the Judiciary system herewith presented and recommend its adoption as Article VI of the Constitution and the Judicial Department.

Nov 12 1878

S. W. Wilson
Chairman

Article VI

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the
2 Senate sitting as a Court of Impeachment, in a Supreme Court, Superior
3 Courts, Justices of the Peace, and such inferior Courts as the Legislature
4 may establish in any incorporated city or town, *or City and County.*

SEC. 2. The Supreme Court shall consist of a Chief Justice and six
2 Associate Justices. The Court may sit in departments and in bank, and shall
3 always be open for the transaction of business. There shall be two depart-
4 ments, denominated, respectively, Department One and Department Two.
5 The Chief Justice shall assign three of the Associate Justices to each depart-
6 ment, and such assignment may be changed by him from time to time. The
7 Associate Justices shall be competent to sit in either department, and may
8 interchange with each other by agreement among themselves or as ordered
9 by the Chief Justice. Each of the departments shall have the power to hear
10 and determine causes and all questions arising therein, subject to the provis-
11 ions hereinafter contained in relation to the Court in bank. The presence of
12 ^{Three} ~~two~~ Justices shall be necessary to transact any business in either of the
13 departments, except such as may be done at Chambers, and the concurrence
14 of ^{Three} ~~two~~ Justices shall be necessary to pronounce a judgment. The Chief
15 Justice shall apportion the business to the departments, and may, in his dis-
16 cretion, order any cause pending before the Court to be heard and decided
17 by the Court in bank. The order may be made before or after judgment
18 pronounced by a department; but where a cause has been allotted to one of
19 the departments, and a judgment pronounced thereon, the order must be made
20 within ^{thirty} ~~sixty~~ days after such judgment, and concurred in by two Associate
21 Justices, and if so made it shall have the effect to vacate and set aside the
22 judgment. If the order be not made within the time above limited, the judg-
23 ment shall be final. No judgment by a department shall become final until

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24 the expiration of the period of ^{thirty}~~sixty~~ days aforesaid, unless approved by the
25 Chief Justice, in writing, with the concurrence of two Associate Justices.
26 The Chief Justice may convene the Court in bank at any time, and shall be
27 the presiding Justice of the Court when so convened. The concurrence of
28 four Justices present at the argument shall be necessary to pronounce a judg-
29 ment in bank; but if four Justices, so present, do not concur in a judgment,
30 then all the Justices qualified to sit in the cause shall hear the argument; ~~and~~
31 ~~judgment may be pronounced by a majority thereof; and if they are equally~~
~~Judges shall be necessary.~~
32 ~~divided in opinion, the judgment or order appealed from shall stand affirmed.~~
33 In the determination of causes, all decisions of the Court in bank or in depart-
34 ments shall be given in writing, and the grounds of the decision shall be stated.
35 The Chief Justice may sit in either department, and shall preside when so
36 sitting, but the Justices assigned to each department shall select one of their
37 number as presiding Justice. All sessions of the Court, whether in bank or
38 in departments, shall be held at the Capital of the State. In case of the
39 absence of the Chief Justice from the place at which the Court is held, or
40 his inability to act, the Associate Justices shall select one of their own num-
41 ber to perform the duties and exercise the powers of the Chief Justice during
42 such absence or inability to act.

SEC. 3. The Chief Justice ~~shall be appointed by the Governor, with~~
2 ~~the advice and consent of the Senate, and shall hold office during good behav-~~
3 ~~ior.~~ ^{and} The Associate Justices shall be elected by the qualified electors of the
4 State at large, ^{at the general State elections at the times and places that State officers are elected;} and the term of office shall be twelve years, from and after the
5 first Monday of January next succeeding their election; ^{Associate} provided, that the
6 six Justices elected at the first election shall, at their first meeting, so classify
7 themselves, by lot, that two of them shall go out of office at the end of four
8 years, two of them at the end of eight years, and two of them at the end of
9 twelve years, and an entry of such classification shall be made in the minutes
10 of the Court in bank, signed by them, and a duplicate thereof shall be filed in
11 the office of the Secretary of State. If a vacancy occur in the office of ~~Asso-~~
12 ^a ~~ciate~~ Justice, the Governor shall appoint a person to hold the office until the
13 election and qualification of a Justice to fill the vacancy, which election shall
14 take place at the next succeeding general election, and the Justice so elected
15 shall hold the office for the remainder of the unexpired term. The first elec-
16 tion of the ~~Associate~~ Justices shall be at the first general election after the
17 adoption and ratification of this Constitution.

Sec. 4. The Supreme Court shall have appellate jurisdiction in all

2 cases in equity ; also in all cases at law which involve the title or possession
 3 of real estate, or the legality of any tax, impost, assessment, toll, or munici-
 4 pal fine, or in which the demand, exclusive of interest, or the value of the
 5 *also in cases of forcible entry & detainer & in all such probate matters as may be provided by law* property in controversy, amounts to three hundred dollars ; ~~and~~ also in all
 6 criminal cases amounting to felony on questions of law alone. The Court
 7 shall also have power to issue writs of mandamus, certiorari, prohibition, and
 8 habeas corpus, and also all writs necessary or proper to the complete exercise
 9 of its appellate jurisdiction. Each of the Justices shall have power to issue
 10 writs of habeas corpus to any part of the State, upon petition ^{by or} on behalf of
 11 any person held in actual custody, and may make such writs returnable
 12 before himself, or the Supreme Court, or before any Superior Court in the
 13 State, or before any Judge thereof. ~~Any Justice of the Supreme Court may~~
 14 ~~allow alternative writs and orders to show cause, with or without a temporary~~
 15 ~~restraining order. In cases of which the Court has original jurisdiction, all~~
 16 ~~issues of law and fact shall be determined by the Court in bank, or one of~~
 17 ~~the departments, in such manner as may be provided by law or the rules of~~
 18 ~~the Court.~~

Sec. 5. The Superior Courts shall have original jurisdiction in all

2 cases in equity, and in all cases at law which involve the title or possession of
 3 real property, or the legality of any tax, impost, assessment, toll, or municipal
 4 fine, and in all other cases in which the demand, exclusive of interest, amounts
 5 ^{Three} ~~to two~~ hundred dollars, and in all criminal cases amounting to felony, and
 6 cases of misdemeanor not otherwise provided for ; also, in actions of forcible
 7 entry and detainer, of proceedings in insolvency, of actions to prevent or abate
 8 ^{also of all matters of probate, and also} a nuisance ; of divorce and for annulment of marriage, and all such special
 9 cases and proceedings as are not otherwise provided for, ~~also, of all mat-~~
 10 ~~ters of probate.~~ And said Courts shall have the power of naturalization, and
 11 to issue papers therefor. They shall have appellate jurisdiction in such cases
 12 arising in Justices' and other inferior Courts in their respective counties ~~on~~
 13 ~~questions of law only~~ as may be prescribed by law. Said Courts shall be
 14 always open (legal holidays and non-judicial days excepted), and their original
 15 jurisdiction shall extend to all parts of the State. Said Courts, and their Judges,
 16 shall have power to issue writs of mandamus, certiorari, prohibition, quo war-
 17 ranto, and habeas corpus, on petition by or on behalf of any person in actual cus-
 18 tody, in their respective counties.

Sec. 6. There shall be in each of the organized Counties or Cities
 2 and Counties of the State a Superior Court, for each of which
 3 at least one Judge shall be elected by the qualified electors
 4 of the County or City and County at the general State election;
 5 provided that in ^{City and} the County of San Francisco there shall be twelve Judges

6 of the Superior Court, any one or more of whom may hold Court. There
 7 may be as many sessions of said Court, at the same time, as there are Judges
 8 thereof. The said Judges shall choose from their own number a presiding
 9 Judge, who may be removed at their pleasure. He shall distribute the busi-
 10 ness of the Court among the Judges thereof, and prescribe the order of business.
 11 The judgments, orders, and proceedings of any session of the Superior Court,
 12 held by any one or more of the Judges of said Courts, respectively, shall
 13 be equally effectual as if all the Judges of said respective Courts presided

14 at such session. In each of the Counties of Sacramento, Los Angeles
 15 and Alameda there shall be elected two such Judges. ~~The Judges~~
 16 ~~between any session to the increase to the number of Judges in any~~
 17 ~~County or City and County of it in State, when the public interest~~
 18 ~~requires such increase.~~

The term of office of Judges of
 19 the Superior Courts shall be six years, from and after the first Monday
 20 of January next succeeding their election; provided, that the twelve
 21 Judges of the Superior Court, elected in the ^{City and} County of San Francisco
 22 at the first election held under this Constitution, shall, at their first meet-
 23 ing, so classify themselves, by lot, that four of them shall go out of office
 24 at the end of two years, and four of them shall go out of office at the end of
 25 four years, and four of them shall go out of office at the end of six years, and an
 26 entry of such classification shall be made in the minutes of the Court, signed
 27 by them, and a duplicate thereof filed in the office of the Secretary of State.
 28 The first election of Judges of the Superior Courts shall take place at the
 29 first general election held after the adoption and ratification of this Constitu-
 30 tion. If a vacancy occur in the office of Judge of a Superior Court the Gov-
 31 ernor shall appoint a person to hold the office until the election and
 32 qualification of a Judge to fill the vacancy, which election shall take place at
 33 the next succeeding general election, and the Judge so elected shall hold office
 34 for the remainder of the unexpired term.

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Sec 7. In any County or City and County, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

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Sec 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do.

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Sec 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than ^{sixty} ~~thirty~~ consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two-thirds of the members of the Senate and two-thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county ^{or City and County} in the State; provided, that no such reduction shall affect any Judge who has been elected.

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Sec 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, ^{adopted by a vote of each House} ~~by a two-thirds of all the members of the Assembly and a majority of all the members elected to the Senate concur therein~~. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

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Sec. 11.

There shall be one Justice of the Peace elected in each town-
ship in the State, and the Legislature shall determine the number of Justices
of the Peace to be elected in each incorporated city and town^{or city and County} and shall fix by
law the powers, duties, and responsibilities of Justices of the Peace; *provided,*
such powers shall not in any case trench upon the jurisdiction of the several
Courts of record, *except that said Justices shall have concurrent*

jurisdiction with the Superior Courts in cases of forcible
entry and detainer, where the rental value does not
exceed twenty-five dollars per month and where
the whole amount of damages claimed does not ex-
ceed two hundred dollars.

Sec. 12. The Supreme Court, the Superior Courts and such other Courts
as the Legislature shall prescribe, shall be Courts of record.

Sec. 13.

The Legislature shall fix by law the jurisdiction of any
inferior Courts which may be established in pursuance of
section one of this article, and shall fix by law the powers, duties, and
responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of
the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other
necessary officers, and shall fix by law their duties and compensation. County
Clerks shall be ex officio Clerks of the Courts of record ~~and the Boards of~~
or Cities and Counties.
~~Supervisors~~ in and for their respective counties. The Legislature may also
provide for the appointment by the several ^{Superior Courts} ~~County~~ Judges, of one or more
Commissioners in their ^{respective} ~~several~~ ^{or Cities and Counties,} counties with authority to perform Chamber
business of the Judges of the ^{Superior} ~~County~~ Courts, to take depositions, and perform
such other ^{business} ~~duties~~ connected with the administration of justice as may be pre-
scribed by law.

SEC. 15. No judicial officer, except Justices of the Peace, ~~Recorders~~, and
^{Court} Commissioners, shall receive to his own use any fees or perquisites of office.—

SEC. 16. The Legislature shall provide for the speedy publication of
such opinions of the Supreme Court as it may deem expedient, and all opinions
shall be free for publication by any person.

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Sec 17. The Justices of the Supreme Court, and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State Treasury for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes; those of the City and County of San Francisco and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento and Sonoma shall constitute the first Class and shall each receive an annual salary of five thousand dollars payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer, Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba and San Bernardino shall constitute the second class and shall receive an annual salary of four thousand dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, ~~Merced~~ Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Yuma, Tuolumne and Ventura shall

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1 constitute the third class and receive an annual
2 salary of Three thousand dollars each, payable
3 quarterly, and those of all other Counties of the
4 State not above enumerated shall constitute
5 the fourth class and receive an annual sal-
6 ary of Two thousand dollars each, payable quar-
7 terly.

2 Sec. 18. The Justices of the Supreme Court and the
3 Judges of the Superior Courts shall be ineligible to any other office than a
judicial office during the term for which they shall have been elected.

2 SEC. 19. Judges shall not charge juries with respect to matters of fact, but
may state the testimony and declare the law.

2 SEC. 20. The style of all process shall be "The People of the State of
3 California," and all prosecutions shall be conducted in their name and by their
authority.

2 SEC. 21. The Justices shall appoint a Reporter of the decisions of the
3 Supreme Court, who shall hold his office and be removable at their pleasure.
4 He shall receive an annual salary of twenty-five hundred dollars, payable
quarterly.

2 SEC. 22. The Judges and Justices of the Peace shall not practice law
in any Court of the State during their continuance in office.

2 SEC. 23. A grand jury shall be composed of ^{twelve} ~~thirteen~~ jurors, and a
3 concurrence of ^{nine} ~~eight~~ shall be necessary to the making of a presentment or
the finding of an indictment.

2 Sec. 24. No one shall be eligible to the Office of Justice of the
3 Supreme Court, unless he be at least thirty-five years of age, and
4 shall have been admitted to practice before the Supreme Court of the State,
5 and no one shall be eligible to the Office of Judge of a Superior Court
6 unless he be at least thirty years of age and shall have been
admitted to practice before the Supreme Court of the State.

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Remuneration to 503
~~Report of~~
~~Committee on~~
Indigency and
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Thornton

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Indigency Committee